IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 21342 of 2004

Between:

**Ex.No.6601328 Sepoy, MOhammad Fazlul Haq, Late Mohammad Ali,
R/o. Village & Post Office Chandole, Mandal:P Pittalavanipalem,
District Guntur, A.P.**

..... PETITIONER

AND

**1 The Union of India, Through The Secretary Ministry of Defence, Govt of India,
New Delhi-110 011.**
2 The Oficer in Charge the ASC REcords, Bangolore (KAR).
3 The Principal CAD (Pensions), Draupadi Ghat Allahabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a direction, orders or a writ, more appropriately one in the nature of a Writ of Mandamus directing declaring the action of the respondents herein; " Declare the action of the Respondent No.2 of wrongly invaliding the petitioner herein from service on 08.09.1968 on the grounds of having contracted the disease IDIOPATHIC EPILEPSY (International Code, 353) which the petitioner herein had never suffered from prior to, during and after discharge from Army Service and thus denying to the petitioner herein his statutory Right to Service Till the age of superannuation and also denying Service Pension/Disability pension to the petitioner herein vide his proceedings No.7301/Pen/Disb dt. 28.Jul, 2004 on the grounds of having served only 7 years 11 months and 19 days of service, i.e., less than pensionale service, as being contrary to Pension Regulations for the Army 1961 and therefore ULTRA VIRES the Rights of the petitioner under the provisions of Article 14, 16 & 21 of the Constitution of India and consequently a direction to issue to the Respondents to grant unto the petitioner herein Disability Pension in terms of Pension Regulations for the Army 1961 w.e.f. 08.09.1968 and pay un to him

the arrears thereof within reasonable period fixed by this Hon'ble Court.

Counsel for the Petitioner:MR.VISHAL SAXENA

Counsel for the Respondent No.: MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 21342 of 2004

O R D E R**:**

The present writ petition is filed to grant a writ of Mandamus declaring the action of the 2nd respondent invaliding the petitioner from service on 8.9.1968 and denying the service pension/disability pension to the petitioner vide proceedings 28.7.2004 as illegal and arbitrary.

The brief allegations that are required to be noticed are, that the petitioner was a retired soldier of Indian Army who joined service as a Sepoy (Driver MT) on 21.9.1960. He was discharged from service on 8.9.1968 in medical category on the ground of having suffered from 'Idiopathic epilepsy'. In the month of August 1967 while he was working in the field area, he suffered a knee injury. The hospital authorities dignosed that the petitioner was suffering from 'osteo arthritis' and therefore the knee injury suffered by him was not responding to any treatment. He was referred to a Base Hospital for expert opinion. Accordingly the Special Surgeon who diagnosed the disease of the petitioner opined that it was not serious enough to warrant discharge of the petitioner. But, all of a sudden in the last week of August 1968 the petitioner was discharged. Challenging the same, nearly after a lapse of 36 years the present writ petition is filed.

Learned counsel for the petitioner contended that at the

time of joining the service the petitioner was physically fit, but without affording any opportunity the petitioner was discharged even though the petitioner was not suffering from 'idiopathic epilepsy'. Therefore, the said discharge suffers from serious infirmities.

Learned counsel for the respondents contended that on the ground of laches the writ petition is not maintainable. The writ petitioner slept over the matter for about 36 long years and there is not even a whisper in the affidavit filed in support of the petition as to why he was prevented from approaching the court in seeking redressal and therefore there are no grounds to admit the writ petition and that the writ petition is liable to be dismissed.

Learned counsel for the petitioner placed reliance on a decision of the apex court in ***Ramchandra Shankar Deodhar v. State of Maharashtra*** wherein it is held "*in the first place it must be remembered that the rule which says that the court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the court must necessarily refuse to entertain the petition. Each case must depend on its own facts".*

There is no doubt about the above proposition of law laid down by the apex court. That is a case where there was a delay of more than 10 years in filing the petition in the context of promise to the post of Dy. Collectors.

No doubt, by reason of delay or laches no rights have been accrued to any others. But, at the same time it is expected by this court a reasonable explanation for the inordinate delay of 36 years. For the first time the petitioner made a representation for grant of pension on 13.7.2004. By the impugned proceedings dated 27.8.2004 it is stated by the respondents that on medical grounds the petitioner was declared unfit for further military service and therefore he was discharged from service on 6.9.1968 and, as he served the military only 7 years 11 months and 19 days, which is less than

pensionable service, he is not entitled for any amount of pension. He has not challenged in his representation dated 13.7.2004 that his discharge was not based upon the report of competent medical authorities. It is not his case in the representation that he was not suffering from idiopathic epilepsy.

Whether the action of the respondents in discharging the petitioner from service is based upon proper material or not cannot be resorted or decided at this belated stage, the reason being all the service documents have been destroyed, the petitioner being a non-pensioner, in terms of para 595 of Regulations of Army, 1987. Therefore, at this belated stage no useful purpose would be served in adjudicating the *lis* whether the petitioner was properly discharged on medical grounds or not. Admittedly, it is not disputed before this court that if a person serves in the military service less than 8 years he is not eligible for pension. No rule is brought to the notice of this court that even if a person serves less than 8 years he is eligible for proportionate pension for the service rendered by him. In the absence of any such rule, the petitioner is not entitled for any pension and the impugned proceedings does not suffer from any incurable legal infirmities so as to call for interference by this court.

Therefore, the writ petition is liable to be dismissed at the stage of admission and it is accordingly dismissed.

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K.C. Bhanu, J.

Date: --12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary Ministry of Defence, Govt of India,
New Delhi-110 011.
2 The Oficer in Charge the ASC REcords, Bangolore (KAR).
3 The Principal CAD (Pensions), Draupadi Ghat Allahabad.

4. 2 C.D. copies.